

ENDORSED
First Judicial District Court

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

MAR 19 2010

Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2888
Santa Fe, NM 87504-2888

imp

SHIRLEY CRUSE, VIVIAN JEANETTE HUNTER,
NORA GARCIA, FONDA OSBORN, NANCY
PEREZ-FUGERE, LILLIE SANDOVAL, CHIP
UPSAL, and GAIL WILLIAMS, on behalf of themselves
And all others similarly situated,

Plaintiffs,

v.

No. D101CV201000932

ST. VINCENT HOSPITAL, d/b/a CHRISTUS
ST. VINCENT REGIONAL MEDICAL CENTER,
a New Mexico Non-Profit Corporation,

Defendant.

PLAINTIFF'S COLLECTIVE ACTION COMPLAINT
(NMSA 1978 § 50-4-26)

COME NOW the Plaintiffs, on their own behalf and on behalf of others similarly situated, by and through their counsel, Youtz and Valdez, P.C. (Shane C. Youtz, Marianne Bowers Lopez) and for their Complaint against the above-named Defendant states as follows:

General Allegations

1. This is a collective action brought by Plaintiffs on behalf of themselves and other similarly-situated employees who are or were employed by Defendant to provide various medical services in Defendant's Hospital.
2. Plaintiffs and others similarly-situated are or were employed by Defendant and were not compensated for all hours worked in violation of New Mexico law.
3. Defendant operates a hospital in Santa Fe, New Mexico. Defendant has a long standing policy of providing its employees with an unpaid thirty-minute lunch break; the actual practice in

the Hospital is inconsistent with this policy. As a consequence of the Hospital's deliberate staffing patterns, employees are rarely able to actually take a thirty-minute lunch break and are generally required to work through lunch. Despite employees' inability to actually take the lunch break, the Defendant generally deducts thirty minutes from each employee's time worked for the day. As a result, the Defendant has knowingly received the benefit of tens of thousands of hours of work, for which it has not compensated its employees. Much of this uncompensated work is performed at overtime rates.

4. Defendant has imposed upon Plaintiffs, through its policies and procedures, very specific obligations to maintain patient care. In many instances the duties associated with patient care are also prescribed by Plaintiffs licensure and professional responsibility requirements. As a consequence of these obligations, Plaintiffs may only take their thirty-minute lunch breaks if the Defendant provides a relief employee to assume the identified obligations. The Defendant, however, rarely schedules or provides relief employees to assume the identified obligations. Further, employees are discouraged from taking thirty minute lunch breaks and are also discouraged from seeking pay for work performed during their unpaid lunch breaks.

5. Such wage practices are proscribed by New Mexico Minimum Wage Act (NMSA 1978 § 50-4-1 *et seq.*)(the "NMMWA") and state common law.

6. Plaintiffs seek to recover, for themselves and for others similarly-situated, back pay and compensatory, punitive and liquidated damages as a result Defendant's failure to pay minimum and overtime wages as required by law as well as injunctive relief.

7. Plaintiffs bring this action under the New Mexico Minimum Wage Act and state common law causes of action.

Parties

8. Plaintiffs are now, and were at all times relevant to this lawsuit, residents of the State of New Mexico.

9. Defendant is registered to do business in New Mexico and is the employer for Plaintiffs and those employees who are similarly situated.

Jurisdiction and Venue

10. This Court enjoys subject matter jurisdiction here because the Complaint alleges a cause of action under the laws of the State of New Mexico, to wit: The New Mexico Minimum Wage Act, NMSA 1978 § 50-4-1 *et seq.* and state common law causes of action.

11. This Court enjoys personal jurisdiction over Defendant because Defendant conducts business in this judicial district.

12. Venue is proper here because the indebtedness sued upon was incurred in this judicial district. NMSA 1978 § 38-3-1.

Collective Allegations

13. Plaintiffs bring this action as a collective action, pursuant to NMSA 1978 § 50-4-26(D) on behalf of themselves and on behalf of all similarly situated employees currently and formerly employed by Defendant.

14. The time periods relevant to delimiting the Class are as follows: The NMMWA provides a three-year statute of limitations for all claims brought under the Act, and also provides that employees may recover all wages owed, regardless of the date of the violation of the Act, where the employer engaged in a continuing course of conduct in violating the Act. NMSA 1978 § 50-4-32.

15. The individuals in the Class are so numerous that joinder of all members is impracticable. Although the precise number of such individuals is currently unknown, Plaintiff believes that the number of people employed by Defendants during the statutory period exceeds 2,000.

16. There are questions of law and fact common to the Class that predominate over any questions solely affecting individual members.

Count I – Violation of the New Mexico Minimum Wage Act (NMSA 1978 § 50-4-1 *et seq.*)

17. Plaintiff incorporates herein the previous allegations of this complaint.

18. At all times relevant to this action, Plaintiffs were employed by Defendant within the meaning of the New Mexico Minimum Wage Act, § 50-4-21.

19. Plaintiffs and others similarly situated were not wages due to them in violation of the New Mexico Minimum Wage Act, NMSA 1978 § 50-4-1 *et seq.*

20. As a direct and proximate result of Defendant's failure to pay wages, Plaintiffs have suffered damages in the forms of lost wages and lost use of such wages.

21. Plaintiffs are entitled to wages and overtime wages owed, plus an amount equal to twice the wages owed in liquidated damages, as well as attorney fees and costs. NMSA 1978. § 50-4-26.

Count II – Unjust Enrichment

22. Plaintiffs incorporate herein the previous allegations of this complaint.

23. Plaintiffs are entitled to payment for all hours worked for Defendant.

24. Defendant failed to pay Plaintiffs and others for all hours worked, retained the fruits of Plaintiffs and others' labor, and retained the monies that should have been paid to Plaintiffs and others as wages for hours worked.

25. Defendant was unjustly enriched by its refusal to pay Plaintiffs for all hours worked, and have benefited at Plaintiffs' expense.

26. Defendant should be required to disgorge this unjust enrichment.

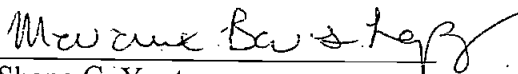
WHEREFORE, Plaintiffs pray that:

- a. The Court determine that this action may be maintained as a collective action pursuant to NMSA 1978 § 50-4-26(D);
- b. Plaintiffs and others be awarded compensatory damages;
- c. Plaintiffs and others be awarded punitive damages;
- d. Plaintiffs and others be awarded liquidated damages;
- e. The Court award Plaintiffs and others pre-judgment and post-judgment interest as permitted by law;
- f. The Court order that the Defendant place in its place of business a notice describing violations as found by the Court or a copy of a cease and desist order applicable to the employers as per NMSA 1978 § 50-4-26(F);
- g. The Court order that Defendant pay Plaintiffs and others' costs and attorney fees as per NMSA 1978 § 50-4-26(E); and
- h. The court award Plaintiffs and the class members such other and further relief as may be necessary and appropriate.

Dated: March 18, 2010

Respectfully submitted,

YOUTZ AND VALDEZ, P.C.


Shane C. Youtz
Marianne Bowers Lopez
900 Gold Ave. SW
Albuquerque, NM 87102
(505) 244-1200 – Telephone
(505) 244-9700 – Facsimile

Attorneys for Plaintiffs

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

ENDORSED
First Judicial District Court

MAR 19 2010

Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268

SHIRLEY CRUSE, VIVIAN JEANETTE HUNTER,
NORA GARCIA, FONDA OSBORN, NANCY
PEREZ-FUGERE, LILLIE SANDOVAL, CHIP
UPSAL, and GAIL WILLIAMS, on behalf of themselves
And all others similarly situated,

Plaintiffs,

v.

No. D101CV201000932

ST. VINCENT HOSPITAL, d/b/a CHRISTUS
ST. VINCENT REGIONAL MEDICAL CENTER,
a New Mexico Non-Profit Corporation,

Defendant.

JURY DEMAND

COME NOW the Plaintiffs, by and through their counsel, Youtz and Valdez, P.C. (Shane C. Youtz, Marianne Bowers Lopez) and hereby demand that this matter be heard before a jury of twelve (12) persons and deposit, concurrently with the filing fee, a jury demand fee in the amount of \$300.00.

Dated: March 18, 2010

Respectfully submitted,

YOUTZ AND VALDEZ, P.C.



Shane C. Youtz
Marianne Bowers Lopez
900 Gold Ave. SW
Albuquerque, NM 87102
(505) 244-1200 – Telephone
(505) 244-9700 – Facsimile

Attorneys for Plaintiffs

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

SHIRLEY CRUSE, VIVIAN JEANETTE HUNTER,
NORA GARCIA, FONDA OSBORN, NANCY
PEREZ-FUGERE, LILLIE SANDOVAL, CHIP
UPSAL, and GAIL WILLIAMS, on behalf of themselves
And all others similarly situated,

Plaintiffs,

v.

No. D101CV201000932

ST. VINCENT HOSPITAL, d/b/a CHRISTUS
ST. VINCENT REGIONAL MEDICAL CENTER,
a New Mexico Non-Profit Corporation,

Defendant.

SUMMONS
THE STATE OF NEW MEXICO

TO: St. Vincent Hospital, d/b/a Christus St. Vincent Regional Medical Center
ADDRESS: c/o Corporation Service Company
125 Lincoln Ave., Suite 223
Santa Fe, NM 87501

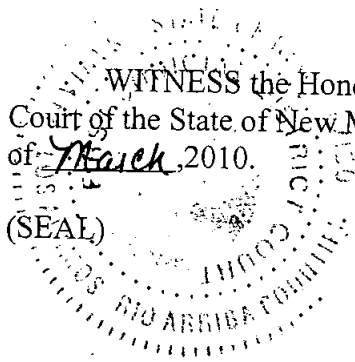
GREETINGS:

You are required to serve upon YOUTZ & VALDEZ, P.C., an answer or motion in response to the complaint which is attached to this summons within thirty (30) days after service of this summons upon you, exclusive of the day of service, and file a copy of your answer or motion with the court as provided in Rule 1-005 NMRA.

If you fail to file a timely answer or motion, default judgment may be entered against you for the relief demanded in the complaint.

Attorney for Plaintiff: Shane Youtz
Marianne Bowers Lopez
YOUTZ & VALDEZ, P.C.
900 Gold Avenue SW
Albuquerque, NM 87102

WITNESS the Honorable Barbara J. Vigil, District Judge of the First Judicial District
Court of the State of New Mexico, and the seal of the District Court of said County, this 19 day
of March, 2010.



Clerk **STEPHEN T. PACHECO**

By Jesus M. Pachecho
Deputy

Exhibit K, Pg. 7

to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees: _____

Signature of person making service

Title (if any)

Subscribed and sworn to before me this _____ day of _____, _____²

Judge, notary or other officer
authorized to administer oaths

Official title

USE NOTES

1. Unless otherwise ordered by the court, this return is not to be filed with the court prior to service of the summons and complaint on the defendant.
2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.

[Adopted effective August 1, 1988; as amended, effective March 1, 2005.]

COMPILER'S ANNOTATIONS

The March 1, 2005 amendment deleted "and file the same, all as provided by law" at the end of the first paragraph and inserted after "this summons" "and file a copy of your answer or motion with the court as provided in Rule 1-005 NMRA", replaced the second paragraph and revised the return paragraphs to conform those paragraphs with the amendment of Rule 1-004 NMRA also approved as of March 1, 2005.

From: sop@cscinfo.com [mailto:sop@cscinfo.com]
Sent: Tuesday, March 23, 2010 05:40 PM
To: Luna, Nina
Subject: Notice of Service of Process

Corporation Service Company ®

CSC SameDay SOP and CSC PowerBrief clients, click [here](#) to receive and view your Service of Process documents now.

For more information on instant access to your SOP, click [Sign Me Up](#).

NOTICE OF SERVICE OF PROCESS

Transmittal Number: 7503252
Date: 03/23/2010

Pursuant to client instructions, we are forwarding this summary and notice of Service of Process. The Service of Process document has been sent to the primary contact listed below.

Entity:	St. Vincent Hospital
Entity I.D. Number:	2735308
Entity Served:	St. Vincent Hospital, d/b/a Christus St. Vincent Regional Medical Center
Title of Action:	Shirley Cruse vs. St. Vincent Hospital dba Christus
Document(s) type:	Summons/Complaint
Nature of Action:	Labor / Employment
Court:	Santa Fe County First Judicial District Court, New Mexico
Case Number:	D101CV201000932
Jurisdiction Served:	New Mexico
Date Served on CSC:	03/23/2010
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Courier

Sender Information:

Shane C. Youtz
505-244-1200

Primary Contact:

Nina Luna
CHRISTUS Health

Copy of transmittal only provided to:

Vinton Douglas
Peggy Voight
Troy Lewis
Ms. Jeri Escott
Nancy Poblenz

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the document(s) and taking appropriate action.

Please visit www.cscglobal.com for more information on CSC's Litigation and Matter Management services, including service of process (SOP) history, online acknowledgement of SOP, fully electronic scanned SOP and SOP package tracking information.

CSC is SAS70 Type II certified for its Litigation Management System.

2711 Centerville Road Wilmington, DE 19808
(888) 690-2882 | sop@cscinfo.com

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

COPY

SHIRLEY CRUSE, VIVIAN JEANETTE HUNTER,
NORA GARCIA, FONDA OSBORN, NANCY
PEREZ-FUGERE, LILLIE SANDOVAL, CHIP
UPSAL, and GAIL WILLIAMS, on behalf of themselves
And all others similarly situated,

Plaintiffs,

v.

No. D-101-CV-2010-00932

ST. VINCENT HOSPITAL, d/b/a CHRISTUS
ST. VINCENT REGIONAL MEDICAL CENTER,
a New Mexico Non-Profit Corporation,

Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of October, 2010, I caused and original and one (1) copy of Plaintiffs' First Set of Requests for Production of Documents and Things to Defendant St. Vincent Hospital, d/b/a Christus St. Vincent Regional Medical Center and the Notice of Taking Deposition of Corporate Representative pursuant to Rule 30(b)(6), along with a copy of this Certificate of Service, to be served via regular U.S. mail, postage pre-paid and affixed thereto, on the following counsel of record for Defendant:

Danny Jarrett
Jackson Lewis LLP
4300 San Mateo Blvd. NE, Suite B-260
Albuquerque, NM 87110

Respectfully Submitted,

YOUTZ & VALDEZ, P.C.



Share Youtz
Marianne Bowers
900 Gold Ave. SW
Albuquerque, NM 87102
Tel. (505) 244-1200

Counsel for Plaintiffs

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

COPY

SHIRLEY CRUSE, VIVIAN JEANETTE HUNTER,
NORA GARCIA, FONDA OSBORN, NANCY
PEREZ-FUGERE, LILLIE SANDOVAL, CHIP
UPSAL, and GAIL WILLIAMS, on behalf of themselves
And all others similarly situated,

Plaintiffs,

v.

No. D-101-CV-2010-00932

ST. VINCENT HOSPITAL, d/b/a CHRISTUS
ST. VINCENT REGIONAL MEDICAL CENTER,
a New Mexico Non-Profit Corporation,

Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of November, 2010, I caused the following documents:

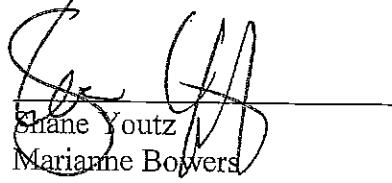
**Plaintiff Shirley Cruse's Answers to Defendant's First Set of Interrogatories;
Plaintiff Nora Garcia's Answers to Defendant's First Set of Interrogatories;
Plaintiff Fonda Osborn's Answers to Defendant's First Set of Interrogatories;
Plaintiff Nancy Perez-Fugere's Answers to Defendant's First Set of Interrogatories;
Plaintiff Lillie Sandoval's Answers to Defendant's First Set of Interrogatories;
Plaintiff Chip Upsal's Answers to Defendant's First Set of Interrogatories; and
Plaintiff Gail Williams' Answers to Defendant's First Set of Interrogatories,**

to be hand-delivered, along with a copy of this Certificate of Service, to the following counsel of record:

Danny Jarrett
James Cook
Jackson Lewis LLP
4300 San Mateo Blvd. NE, Suite B-260
Albuquerque, NM 87110
Counsel for Defendant

Respectfully Submitted,

YOUTZ & VALDEZ, P.C.


Shane Youtz
Marianne Bowers
900 Gold Ave. SW
Albuquerque, NM 87102
Tel. (505) 244-1200

Counsel for Plaintiffs